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Preparatory Commission for the International Criminal Court

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Proceedings of the Preparatory Commission at its ninth session (8-19 April 2002)

Draft summary

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 8 to 19 April 2002, in accordance with General Assembly resolution 56/85 of 12 December 2001.

2. In accordance with paragraph 2 of resolution F of the Conference, the Preparatory Commission consists of representatives of States which signed the Final Act of the Conference and other States which were invited to participate in the Conference.

3. Under paragraph 4 of General Assembly resolution 56/85, the Secretary-General was requested to reconvene the Preparatory Commission, in accordance with resolution F of the Conference, from 8 to 19 April and from 1 to 12 July 2002, so as to continue to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

4. In accordance with paragraph 6 of General Assembly resolution 56/85, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

5. Under paragraph 7 of the same resolution, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the

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Commission, receiving copies of the official documents and making available their materials to delegates.

6. The Bureau of the Preparatory Commission, which was elected at the 1st and 2nd meetings of the Commission, on 16 and 22 February 1999, elected at the 34th and 37th plenary meetings, on 8 and 19 April 2002, two new Vice-Chairmen, from the Eastern European Group and ..... The Bureau continued its work, with the following composition:

Chairman:
Philippe Kirsch (Canada)

Vice-Chairmen:
George Winston McKenzie (Trinidad and Tobago)
Mirza Kusljugic (Bosnia and Herzegovina)

Rapporteur:
Salah Suheimat (Jordan)

7. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Václav Mikulka, acted as Secretary of the Preparatory Commission. The Codification Division provided the substantive servicing for the Commission.

8. In accordance with the decision taken at its 33rd meeting, on 5 October 2001, the Preparatory Commission agreed on a work plan for its ninth session, which provided that, in addition to the working groups on the first-year budget, on basic principles governing a Headquarters Agreement and on the Crime of Aggression, the following two additional working groups would be established: the Working Group on the Assembly of States Parties — Preparatory Documents, and the Working Group on Financial Issues. The coordinators for the two additional working groups were to be Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran) as Coordinator for the Working Group on the Assembly of States Parties — Preparatory Documents, and Mr. Rolf Fife (Norway) as Coordinator for the Working Group on Financial Issues.

9. Mr. Fife was no longer available to coordinate the work on financial issues; accordingly at the 34th plenary meeting, on 8 April, the Bureau reassigned Mr. Fife's tasks to four other coordinators. The list of coordinators at the current session is therefore as follows:

(a) Zsolt Hetesy (Hungary), Coordinator for the Basic Principles Governing a Headquarters Agreement;

(b) Saeid Mirzaee-Yengejeh (Islamic Republic of Iran), Coordinator for the Assembly of States Parties — Preparatory Documents;

(c) Valentin Zellweger (Switzerland), Coordinator for the First-Year Budget;

(d) Christian Much (Germany), Coordinator for the Financial Rules;

(e) Gaile Ramoutar (Trinidad and Tobago), Coordinator for the Victims Trust Fund;

(f) John Holmes (Canada), Coordinator for the remuneration of judges, the Prosecutor and the Registrar;

(g) Silvia Fernández de Gurmendi (Argentina), Coordinator for the Crime of Aggression.

10. At its 35th meeting, on 11 April 2002, the Preparatory Commission was addressed by His Excellency President Arthur Robinson of Trinidad and Tobago.

11. At its 36th meeting, on 15 April 2002, the Preparatory Commission took note of the oral report of Ms. Silvia Fernández de Gurmendi (Argentina), Chair of the Bureau's subcommittee acting as an interlocutory with the host country, on the functions that the subcommittee and the host country had identified as being necessary to take as soon as possible in order to ensure the expeditious establishment of the Court.The Chair of the subcommittee noted that those functions included the setting up of provisional systems to provide the basic elements necessary to ensure that the infrastructure was in place to welcome the first officials of the Court. Those systems, to be devised by an advanced team of experts, would also ensure custody of information received after the entry into force of the Rome Statute and would allow for the Court to rapidly recruit personnel and procure goods and services necessary for its effective functioning. To that end, the aim was that the experts would assist with the setting up of systems for human resources, a computerized financial system that would take into account the special requirements of a judicial institution, a computerized data and case management system, a security system, as well as systems on legal issues, public information, and the administration and management of the building. More specifically, the setting up of those systems would entail the following tasks:

- In the area of human resources: drafting model personnel contracts; beginning the preparation of job descriptions and a job classification system; recommending a commercial health insurance plan; recommending rules and regulations for service-incurred accidents; and establishing, with the assistance of financial experts, a payroll system;

- In the area of finance: preparing for the setting up of bank accounts, a budget system and a payment/accounting system with all relevant checks and controls;

- In the area of information technology: in consultation with the host country, beginning the basic work and preparing a full outline of the options available for a computerized data and case management system; providing the necessary support to help set up the human resources and finance systems; assisting on aspects of information security; and preparing a web site allowing for Internet access;

- In the area of security: establishing a mechanism to ensure information security; preparing staff policies on security aspects; and establishing connections with security systems of other relevant organizations;

- On legal issues: assisting in the legal aspects of the human resources, finance and procurement systems which are being set up; dealing with host country privileges and immunities issues; performing a "custodial function", i.e., acknowledge receipt of communications to the Court prior to the election of the high officials; and taking custody of documents that could constitute potential evidence in future proceedings before the Court;

- On public information: dealing, inter alia, with routine information matters; producing information materials; and updating the web site;

– On buildings and facilities management: liaising with the host country on the preparation of the temporary building, the building of a courtroom space and the appropriate allocation of furnishings;

– On procurement: recommending and preparing model procurement contracts and liaising with the host country on the provision of movable infrastructure.

12. The Chair of the subcommittee noted that there would be a need for an expert to coordinate the performance of the above-mentioned tasks, and also stressed that the experts would not be drafting the actual job descriptions and other human resources matters, nor would they be doing any actual procurement. Such matters would ultimately be left for the officers of the Court. The role of the advanced team, which would comprise seven or eight independent, mid-level experts, would be to provide guidance and assistance to the Court during its initial stages. The experts will establish the systems and undertake functions until the first meeting of the Assembly of States Parties. The Chair of the subcommittee further explained that discussions were under way with the two ad hoc Tribunals and the Department of Peacekeeping Operations of the Secretariat to identify experts with proven experience in the handling of systems similar to those required by the Court. As regards the financing of the team of experts, mention was made of contributions from the European Union and the MacArthur Foundation, a private independent charitable foundation.

13. At its 37th meeting, on 19 April 2002, the Preparatory Commission took note of the oral reports of the coordinators of the working groups on: the Crime of Aggression, the Assembly of States Parties — Preparatory Documents, the Basic Principles Governing a Headquarters Agreement, the First-Year Budget, the Financial Rules, the Victims Trust Fund and the remuneration of judges, the Prosecutor and the Registrar.

14. At the same meeting, the Preparatory Commission adopted its report on its ninth session (PCNICC/2002/....), containing the draft texts of the Basic Principles Governing a Headquarters Agreement and the Financial Rules, as well as two draft resolutions for adoption by the Assembly of States Parties, one on the Secretariat of the Assembly of States Parties and the other on crediting contributions to the United Nations Trust Fund to support the Establishment of the International Criminal Court.

15. The Preparatory Commission noted with satisfaction that, during its ninth session, 16 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105 of 8 December 1998, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Institute of DePaul University (United States of America) provided accommodation to delegates from the least developed countries that attended the session.

16. The list of documents relating to the items considered at the ninth session and remaining on the work plan of the Commission is contained in annex .... to the present document.

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Draft report of the Preparatory Commission for the International Criminal Court

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Introduction

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, continued to carry out its mandate, in accordance with resolution F of the Conference and General Assembly resolution 56/85 of 12 December 2001, to discuss ways to enhance the effectiveness and acceptance of the Court.

2. In accordance with General Assembly resolution 56/85, the Preparatory Commission met at United Nations Headquarters for its ninth session from 8 to 19 April 2002.

3. The Bureau, as elected by the Preparatory Commission at its 1st and 2nd meetings, on 16 and 22 February 1999, continued to act as the Bureau of the Commission at its ninth session. At its 34th and 37th meetings, on 8 and 19 April 2002, the Commission elected Mirza Kusljugic and ..... as Vice-Chairmen of the Commission.

4. At its fifth session, from 12 to 30 June 2000, the Preparatory Commission had adopted a report on the work of the Commission at its first to fifth sessions,[1] to which was annexed the finalized draft texts of the Rules of Procedure and Evidence (PCNICC/2000/1/Add.1) and of the Elements of Crimes (PCNICC/2000/1/Add.2).

5. At its eighth session, at the 33rd meeting, on 5 October 2001, the Preparatory Commission had adopted a further report on the work of the Commission at its sixth, seventh and eighth sessions containing, in accordance with paragraph 5 of resolution F of the Conference, the draft texts of the Relationship Agreement between the Court and the United Nations, the Financial Regulations, the Agreement on the Privileges and Immunities of the Court, and the Rules of Procedure of the Assembly of States Parties.[2] That report also contained as annexes two draft resolutions of the Assembly of States Parties, one on the establishment of the Committee on Budget and Finance, and the other on relevant criteria for voluntary contributions to the International Criminal Court.

6. At its ninth session, at the 37th meeting, on 19 April 2002, the Preparatory Commission adopted yet a further report on the work of the Commission at its ninth session, containing also in accordance with paragraph 5 of resolution F of the Conference, the draft texts of the Basic Principles Governing a Headquarters Agreement and the Financial Rules. The report also contains in annexes I and II of the present report two draft resolutions of the Assembly of States Parties, one on the Secretariat of the Assembly of States Parties, and the other on crediting contributions to the United Nations Trust Fund to support the Establishment of the International Criminal Court.

7. Also, at its 37th meeting, the Preparatory Commission agreed to include in its report the following, which was raised with respect to the report of the Working Group on the Basic Principles Governing a Headquarters Agreement to be Negotiated Between the Court and the Host Country:

- In connection with the discussions on the basic principles governing the headquarters agreement between the International Criminal Court and the Kingdom of The Netherlands, a question was raised concerning the relevant

principles to be applied to the Assembly of States Parties. However, the Working Group did not have sufficient time to consider the issue in all its aspects. The attention of the Assembly is therefore drawn to this important issue with a recommendation that the Assembly examine it.

8. At its ninth session, at the 36th meeting, on 15 April 2002, the Preparatory Committee took note of the proceedings of an inter-sessional meeting of experts held at The Hague from 11 to 15 March 2002, and recommended that the report of the meeting[3] be transmitted to the Assembly of States Parties for onward transmission to the International Criminal Court.

9. The Preparatory Commission noted with satisfaction that, during its ninth session, a total of 16 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Law Institute of DePaul University (United States of America) provided accommodation to delegates from the least developed countries who attended the ninth session.

10. The list of documents relating to the Basic Principles Governing a Headquarters Agreement and the Financial Rules is contained in annex III to the present report.

Notes

[1] PCNICC/2000/1 and Add.1 and 2. The Preparatory Commission's first to fifth sessions were held from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999 and from 13 to 31 March and 12 to 30 June 2000.

[2] PCNICC/2001/1 and Add.1-4. The Preparatory Commission's sixth to eighth sessions were held from 27 November to 8 December 2000, 26 February to 9 March 2001 and 24 September to 5 October 2001.

[3] See PCNICC/2002/INF/2.